08-13555-scc Doc 22902 Filed 11/15/11 Entered 12/05/11 09:32:34 Main Document Pg 1 of 16

MEDIOBANCA

Banca di Cudita Tinanziaria Sp. St.

Milan, 11 November 2011 CL.020/11

To

Office of the United States Trustee for Region 2

33 Whitehall Street, 21st Floor, New York

New York 10004

Attn: Tracy Hope Davis, Esq., Elisabetta Gasparini, Esq. And Andrea Schwartz, Esq.

With copy to

Honorable James M. Peck

One Bowling Green, New York New York 10004, Courtroom 601

Weil Gotshal & Manges LLP

767 Fifth Avenue, New York New York 10153 Attn: Jacqueline Marcus, Esq.

Milbank, Tweed, Hadley & McCloy LLP

1 Chase Manhattan Plaza, New York New York 10005 Attn: Dennis F. Dunne, Esq., Dennis O'Donnell, Esq., and Evan Fleck, Esq.

Re: Objection to Notice of Proposed Assumption of executory contracts and unexpired leases pursuant to Debtors' Third Amended Joint Chapter 11 Plan pursuant to Section 1121 of the Bankruptcy Code - SECOND DELIVERY

Dear Sir, Madam,

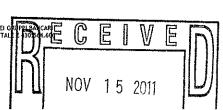
Reference is made to your communication dated 27 October 2011.

We hereby inform you that the delivery of the attached letter, dated 8 November 2011, has not been accomplished within 10 November, as requested by You, due to a miscarriage by the courier Fedex Express.

Fedex undertook to delivery four original letters, addressed to You and to each of the entities copied hereto, by yesterday 10 November. Three letters were delivered to the relevant addressee, whilst we were informed by Fedex Express that the letter addressed to You was lost.

We are therefore re-sending the following documents:

- 1. Copy of the signed letter dated 8 November 2011, sent to Your attention;
- 2. A new original letter, dated 8 November 2011;





Filed 11/15/11 Entered 12/05/11 09:32:34 Main Document Pg 2 of 16

3. The following communications from Fedex Express: (i) copy of Fedex Express' proof of posting relating to the fourth letters; (ii) a print of Fedex Express' internet page showing that three letters, but not Your letter (letter No. 898537053896), were delivered to the relevant addresses (please make reference to the code number assigned to each letter under the proof of posting documentation to identify the relevant letters); and (iii) a communication from Fedex Express confirming that Your letter was delivered by us to Fedex Express in time to be delivered by yesterday 10 November.

Moreover, please note that, in order to avoid any further inconvenience, we are sending to Your attention two original copies of this letter, via two independent curriers. For sake of clarity, two originals of this letter shall be sent only to You, while only one single copy will be sent to the other parties copied hereto.

In light of the above explanations, we trust that our objection to the Notice of Proposed Assumption was timely served and is generally in order.

Best regards,

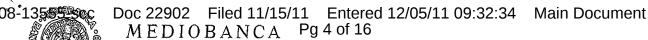
Mediobanca Banca di Credito Finanziario

Authorized Signature



Annex 1

Signed letter dated 8 November 2011



MEDIOBANCA Banca di Credito Timanziario Sp.A.

> Milan, 8 November 2011 CL.020/11

To:

Honorable James M. Peck

One Bowling Green, New York New York 10004, Courtroom 601

Weil Gotshal & Manges LLP

767 Fifth Avenue, New York New York 10153 Attn: Jacqueline Marcus, Esq.

Office of the United States Trustee for Region 2

33 Whitehall Street, 21st Floor, New York

New York 10004

Attn: Tracy Hope Davis, Esq., Elisabetta Gasparini, Esq. And Andrea Schwartz, Esq.

Milbank, Tweed, Hadley & McCloy LLP

1 Chase Manhattan Plaza, New York

New York 10005

Attn: Dennis F. Dunne, Esq., Dennis O'Donnell, Esq., and Evan Fleck, Esq.

Re: Objection to Notice of Proposed Assumption of executory contracts and unexpired leases pursuant to Debtors' Third Amended Joint Chapter 11 Plan pursuant to Section 1121 of the Bankruptcy Code

Please see enclosed Mediobanca S.p.A. objection to Notice of Proposed Assumption of executory contracts and unexpired leases pursuant to Debtors' Third Amended Joint Chapter 11 Plan pursuant to Section 1121 of the Bankruptcy Code.

Regards,

Mediobanca Banca di Credito Finanziario S.p.A.

Legal Counsel

Banca di Credito Tinanzierio Sp.Sl.

Milan, 8 November 2011

CL.020/11

To: Honorable James M. Peck One Bowling Green, New York New York 10004, Courtroom 601

To: Weil Gotshal & Manges LLP 767 Fifth Avenue, New York New York 10153 Attn: Jacqueline Marcus, Esq.

To: Office of the United States Trustee for Region 2
33 Whitehall Street, 21st Floor, New York
New York 10004
Attn: Tracy Hope Davis, Esq., Elisabetta Gasparini, Esq. And Andrea Schwartz, Esq.

To: Milbank, Tweed, Hadley & McCloy LLP

1 Chase Manhattan Plaza, New York

New York 10005

Attn: Dennis F. Dunne, Esq., Dennis O'Donnell, Esq., and Evan Fleck, Esq.

Dear Sirs,

Re: Objection to Notice of Proposed Assumption of executory contracts and unexpired leases pursuant to Debtors' Third Amended Joint Chapter 11 Plan pursuant to Section 1121 of the Bankruptcy Code,

We make reference to the 1992 ISDA Master Agreement (Multicurrency — Cross Border) dated 6 November 2000 (the "Agreement"), as as supplemented by the Schedule thereto and by a Credit Support Annex dated as of 6 November 2000 which forms part of the Agreement, entered into by and between Mediobanca — Banca di Credito Finanziario S.p.A. and Lehman Brothers Special Financing Inc. ("LBSF"). Capitalized terms not defined in this letter shall have the same meaning ascribed to them in the Agreement.

Reference is also made to your communication dated 27 October 2011 whereby you notified us that you intend to assume the Agreement, to the extent not already expired by its own terms.

In this regards, we would like to bring to your attention that the Agreement has indeed expired by its own terms as a consequence of the termination notice dated 17 September 2008 and sent by us to LBSF whereby we exercised our right to terminate all the transactions entered into with LBSF under the Agreement in accordance with Section 6 of the Agreement and designated 18 September 2008 as early termination date of all the transactions entered into under the Agreement (the "Early Termination Date").

Filed 11/15/11 Entered 12/05/11 09:32:34 Main Document Pg 6 of 16

Accordingly, we maintain that the Agreement is not capable of being assumed by you, contrary to what your communication may suggest. We note that Lehman itself, either directly or through LAMCO Services Ltd, has confirmed in many occasions that it also deems the Agreement to have been early terminated, so much so that we are currently engaged in discussions around the determination of the termination value of the Agreement. We cannot see how Lehman could have possibly engaged in such discussions, had it not accepted that the Agreement had been terminated.

In the light of the above, we hereby OBJECT to assumption of the Agreement on the basis that it has already expired on the Early Termination Date and as such it is not capable of being assumed by you.

Nothing in this notice shall be deemed to constitute a waiver of any rights, claims and remedies that we may have at law, in equity, under the Agreement or any other agreement between you and us, or otherwise, nor shall it be construed as an admission of any fact in respect of the subject matter of this letter.

Yours Sincerely,

Mediobanca Banca di Credito Finanziari

Authorized signature

Legal Counsel

2



Annex 2

New original signed objection letter

Milan, 8 November 2011

CL.020/11

To: Honorable James M. Peck One Bowling Green, New York New York 10004, Courtroom 601

Banca di Credite Tinanziario Sp.A.

To: Weil Gotshal & Manges LLP 767 Fifth Avenue, New York New York 10153 Attn: Jacqueline Marcus, Esq.

To: Office of the United States Trustee for Region 2
33 Whitehall Street, 21st Floor, New York
New York 10004
Attn: Tracy Hope Davis, Esq., Elisabetta Gasparini, Esq. And Andrea Schwartz, Esq.

To: Milbank, Tweed, Hadley & McCloy LLP

1 Chase Manhattan Plaza, New York

New York 10005

Attn: Dennis F. Dunne, Esq., Dennis O'Donnell, Esq., and Evan Fleck, Esq.

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Nothing in this notice shall be deemed to constitute a waiver of any rights, claims and remedies that we may have at law, in equity, under the Agreement or any other agreement between you and us, or otherwise, nor shall it be construed as an admission of any fact in respect of the subject matter of this letter.

Yours Sincerely,

Mediobanca

Banca di Credito Finanzia

Authorized signature

Authorized signature

08-13555-scc Doc 22902 Filed 11/15/11 Entered 12/05/11 09:32:34 Main Document Pg 10 of 16



Annex 3

Communications/Prints from Fedex Express

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| 898537053896 | In transit | | NEW YORK, NY | |
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Federal Express Europe, Inc. 16 Tel. (02) 2188.1 Filiale Italiana Praxis Business Park Strada Padana Superiore, 2/8 20063 Cernusco sul Naviglio (MI)

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Cernusco S/N, Nov, 11th 2011

To MEDIOBANCA SPA P.tta Enrico Cuccia, 1 20121 Milano

Attn.Ms Francesca Boriani

Subject: Your shipment dated nov,9th sent under AWB 898537053896

Dear Ms Boriani,

with reference to the above mentioned shipment we regret to inform you that it is not located at the moment.

We activated all the necessary procedures to locate the shipment as soon as possible and the reasearch is still ongoing; we will keep you informed as soon as we have new information.

In the meantime we already instruct our billing office to credit back to you the transportation charges due.

We confirm that this shipment, addressed to

Office of The United states Trustee for Region 2, 33 Whitehall Street 21ST Floor – 10004 New York USA

was picked up on November 9th from your offices located in Piazzetta Cuccia 1 in Milan at

The commitment for the delivery of this shipment was November 10th by 8am in New York.

We sincerely apologize for any inconvenience this situation could have caused and we remain at your disposal in case any further clarification should be needed.

Best regards,

Remo Michelazzo

Sales Solutions & Support Representative EMEA

Many Calden FedEx Express Europe, Middle East, Indian Subcontinent & Africa

Tel: +39.02.21887459 Fax: +39.02.21888460